D.B. CIVIL WRIT PETITION NO. 5614/2005

Ashok Kumar & Anr.

Vs.

State of Rajasthan & Ors.

DATE OF ORDER :: 10.5.2007

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE BHANWAROO KHAN

Mr. H.S. Shrimali,for the petitioner.
Mr. N.S. Acharya)
Mr. Rajeev Purohit)
Mr. M.S. Purohit)
Mr. S.L. Jain) for the respondents.
Mr. L.R. Upadhyaya, Deputy Govt. Advocate.

Heard.

We find from the record of the proceedings that on 18.1.2006, the Court recorded following order :-

> "When the case was taken up it transpired that applications for impleadment have been filed one by Madan Gopal, Radheyshyam and Bhanwar Lal and the other by Moti Lal Joshi and others. It is stated by their counsel that the petitioners had filed application for allotment of land and when they did not succeed, they filed this writ petition as public interest litigation. According to the counsel, the petition is an example of abuse of public interest litigation.
>
> Let the aforesaid impleadment applications be put up on the next date. The petitioners may, if so advised, to file reply.

The matter may be taken up on 13.2.2006."

Creating the doubt about the bonafides of the petitioners in bringing this litigation as Public Interest Litigation, the petitioners have been granted time for filing reply to those assertions. Admittedly, those assertions have been made more than 15 months ago and the averments made by the applicants in their affidavit remain uncontroverted.

This alone is sufficient to non suit the present petitioner. Subsequent thereto, after intervening the proceedings about the impleadment of other applicants as parties when the matter came up for hearing on 10.4.2007 an objection was raised that signatures of Ashok Kumar on the petition as well as vakalatnama are forged and the Court passed the order on 10.4.2007 prima facie satisfied about these assertions and directed that notices be issued to the counsel appearing for the petitioners and petitioner No.2 Kapil why appropriate action be not taken against them. No reply has been furnished thereto also.

In these circumstances, it is apparent that this Public Interest Litigation has been brought as an abuse of process of the Court for ulterior motives and obviously cannot be allowed to be prosecuted by the petitioners any more and it also deserves to be

dismissed with exemplary costs.

Accordingly, the writ petition is dismissed with costs of Rs.50,000/- for carrying this litigation thus far.

This is without prejudice to the action initiated by the Division Bench on 10.4.2007 against petitioner No.2 Kapil and Advocate Shri H.S. Shrimali, for which a separate file shall be created. Therefore, separate file should be opened arraying petitioner No.2 Kapil and Shri H.S. Shrimali, Advocate as respondents for the purpose of proceedings further in terms of the direction dated 10.4.2007. Whatever explanation should be furnished by these two persons may be part of record in such separate file.

The liabilities of Ashok Kumar apparently shall be subject to outcome of aforesaid enquiry. In case signature of Ashok Kumar is found to be forged only Kapil shall be responsible for the cost. But if Ashok Kumar is found to be genuine petitioner, the cost will be liabilities of both the petitioners.

(BHANWAROO KHAN),J. (RAJESH BALIA),J.

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